

NOTICE OF EXEMPT RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

R18-2-326.01

Rulemaking Action

New Section

2. The statutory authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:

Authorizing Statutes: Laws 2010, Seventh Special Session, Chapter 7, Section 5

Implementing Statutes: A.R.S. § 49-426(E)(1)

3. The effective date of the rules:

July 1, 2010

4. A list of all previous notices appearing in the Register addressing the exempt rule:

Notice of Public Information 16 A.A.R. 742, May 7, 2010

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking.

Name: Danielle M. Dancho

Address: Arizona Department of Environmental Quality

1110 W. Washington St.

Phoenix, AZ 85007

E-mail: dmd@azdeq.gov

Telephone: (602) 771-4210 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)

Fax: (602) 771-2366

6. An explanation of the rule, including the agency's reasons for initiating the rule, including the statutory citation to the exemption from regular rulemaking procedures:

In Laws 2010, Seventh Special Session, Chapter 7, Section 5, the Arizona Department of

Environmental Quality (ADEQ) was granted authority to increase fees in fiscal year 2010-2011 for services in fiscal year 2010-2011. As stated in Laws 2010, Seventh Special Session, Chapter 7, Section 5, the legislative intent is that the additional revenue generated by the fee increases for the entire agency not exceed \$5,779,100. ADEQ has complied with Section 5, paragraph (B) of the session law and submitted a specific fee plan for legislative consideration by April 1, 2010, which resulted in several rulemakings including this one.

Laws 2010, Seventh Special Session, Chapter 7, Section 5, states that ADEQ is “exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of establishing fees pursuant to this section until July 1, 2011.”

ADEQ examined multiple fees across its three divisions that generate fees, Air Quality, Waste Programs, and Water Quality. ADEQ considered the stability of the funding resource, impact on stakeholders, and the revenue shortfall projected for fiscal year 2011. In light of those considerations, ADEQ is adding rule R18-2-326.01, which will increase emissions fees for fiscal year 2011 paid by Class I Title V sources that have undergone initial startup by January 1, 2009. The addition of rule R18-2-326.01 will increase fees for every Class I Title V facility within the State. Every facility will be required to pay an additional \$20.82 per ton of emissions and will pay the same emissions fee. The increase in emissions fees is anticipated to generate approximately \$1,294,300 in additional revenue that will be used to fund the services of ADEQ in fiscal year 2011.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The April 1, 2010 plan, as required by Laws 2010, Seventh Special Session, Chapter 7, Section 5.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Laws 2010, Seventh Special Session, Chapter 7, Section 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this

Section until July 1, 2011. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Not applicable

11. A summary of the comments made regarding the rule and the agency response to them:

ADEQ is providing public notice and an opportunity for public comment on these rules. See ADEQ's website, <http://www.azdeq.gov>, for further information. Written comments on the exempt rules must be received by close of business June 7, 2010.

Laws 2010, Seventh Special Session, Chapter 7, Section 5, authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purpose of establishing fees pursuant to this Section until July 1, 2011. As an exempt rulemaking, this rule will not need to be approved by the Governor's Regulatory Review Council, and no hearing will be held.

12. Any other matters prescribed by statutes that are applicable to the specific agency or any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule? If so, please indicate the Register citation:

No

15. The full text of the rule follows:

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ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-326.01 Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

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ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326.01 Emissions-Based Fee Increase Related to Individual Permits for Fiscal Year 2011

In addition to the emissions-based fees required under R18-2-326(C) for Class I Title V sources for Calendar Year 2008, a one-time emissions-based fee of \$20.82 per ton of actual emissions of all regulated pollutants emitted during Calendar Year 2008 shall be due within 30 days of the invoice postmark date for the increased fee.

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